उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(17)

मामला क्रमांक Cr.A. 283/2002 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT (In Jail)	Sanichar, S/o Sukheyi, resident of Dandkesra, P.S. Kamleshwarpur, Distt. Sarguja (CG).
		-Versus-
	RESPONDENT	State of Chhattisgarh, Through P.S. Kapu, Distt. Raigarh (CG).

Present :- Shri Ratindra Mishra, counsel for the appellant.
Shri Ashish Shukla, Addl. Public Prosecutor for the State.

DB: - HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

ORAL JUDGMENT
(Delivered on 12th April, 2007)

L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 10-8-2001 passed by Third Additional Sessions Judge, Raigarh, in Sessions Trial No.125/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Charkuram, and sentenced to undergo imprisonment for life.

2) The case of the prosecution, in brief, is that on 20-3-2000 Charkuram (since deceased) along with his wife Batasibai was going to his wheat field. He was accompanied by Birbal and his wife Bihani. At that time, accused Sanichar appeared on the scene and attacked Charkuram with a crowbar on

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his legs, as a result of which he fell down on the ground. Thereafter, accused attacked with an axe on his chest and Charkuram died spontaneously. Accused ran away leaving behind the crowbar and axe. The wife of the deceased informed about the incident to Chandroram and Amarsai. Manbodh, son of the deceased, who was in forest was informed and he came to the place of incident. Thereafter Manbodh (PW-1) reported the matter in the Police Station Kapu. The Investigating Officer Rakesh Bhoi (PW-11) took up the investigation. He recorded the merg intimation (Ex.P/17) and First Information Report (Ex.P/15). Thereafter he prepared the inquest (Ex.P/3) on the body of the deceased. He also prepared the site plan (Ex.P/1). The Investigating Officer seized the crowbar and the axe under Ex.P/4. The body of Charkuram was sent for postmortem to the Government Hospital, Dharamjaigarh under Ex.P/9 where Dr. Anil Kumar conducted the postmortem and prepared the report (Ex.P/10). He opined that the deceased died due to syncope as a result of hemorrhage due to injury.

3) After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dharamjaigarh, who in turn committed the case to the Court of Sessions Judge, Raigarh, from where learned Additional Sessions Judge, Raigarh, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellant, the prosecution examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that

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he is innocent and has been falsely implicated in the case. He also stated that the witnesses are liars.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties and perused the material available on record.

7) Learned counsel appearing for the accused/appellant has not disputed the homicidal death of Charkuram. Moreover, from the ocular evidence of Birbal (PW-3), Bihani Bai (PW-9), Batasi Bai (PW-10) as also the evidence of Dr. Anil Kumar (PW-6), it is established that death of Charkuram was homicidal in nature.

8) As far as involvement of the accused in the crime in question is concerned, Batasi Bai (PW-10), wife of the deceased, has stated that at the time of incident she along with her husband Charkuram was going to their field. The accused all of a sudden came, in the first instance, he attacked with crowbar on the legs of Charkuram, as a result of which he fell down and thereafter accused attacked with the axe on the chest of deceased. The above evidence of Batasi Bai (PW-10) is corroborated by the evidence of Birbal (PW-3) at whose house the deceased came for lunch along with his wife Batasi Bai. The above evidence is also corroborated by Bihani Bai (PW-9), wife of Birbal. Both Birbal and Bihani Bai categorically stated that they saw the accused attacking the deceased firstly with crowbar on the legs and thereafter attacked with axe.

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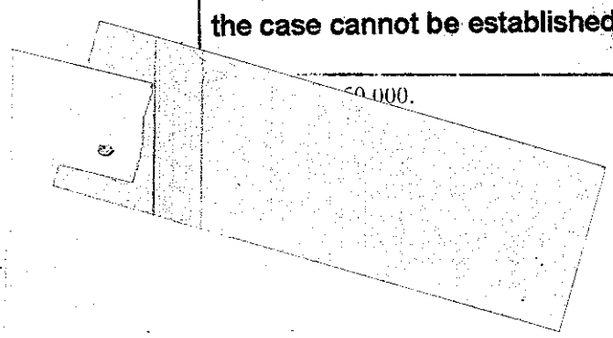
9) Learned counsel appearing for the accused/appellant argued that all the witnesses have stated that the accused in the first instance attacked with crowbar, but no injury on the legs was noticed by the Doctor and, therefore, their evidence appears to be unnatural.

10) In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have perused the record. As per the record, the crowbar was cylindrical, therefore, there was no probability that by attacking with crowbar Charkuram might have received visible injury. Moreover, the evidence of three eyewitnesses is consistent and their evidence is corroborated by the medical evidence because Dr. Anil Kumar (PW-6) has categorically stated that there was incised wound on the front of right side of the chest extending upwards and outwards on to the neck, obliquely in size of 7.6 cm x 3.1 cm x 2.8 cm. The margins were clear cut, clinical and upper two ribs were fractured. Jugular veins and common carotid artery cut. Clotted blood present in and around the wound. Therefore, form the above medical evidence, the evidence of eyewitnesses is corroborated. Moreover, in cross-examination of these witnesses, the defence has not been able to elicit any circumstance, which makes the case of the prosecution doubtful.

11) Learned counsel for the accused/appellant also argued that the prosecution has not been able to establish the motive, therefore, the prosecution case cannot be believed.

12) It is settled law that when there is cogent and clear evidence available on record regarding the commission of the crime, then motive becomes irrelevant. It is not necessary that in such cases without proving the motive the case cannot be established.



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	13) For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court. The accused attacked the deceased on the chest with a deadly weapon i.e. axe as a result of which he sustained fatal injury on the chest and died spontaneously. Therefore, the conviction under Section 302 of the Indian Penal Code and sentence imposed against the accused/appellant under that Section is legal, which requires no interference. 14) In the result, the appeal being devoid of merit deserves to be dismissed and it is hereby dismissed. Sd/- L.C.BHADOO Judge Sd/- DHIRENDRA MISHRA Judge Gowri	

GRPRJ — FS/246— 2/2007 — 50,000.